

Exhibit B

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JON HART, ALEX DANIELS AND)
JOSHUA DUNLAP,)
Plaintiffs,)
vs.) Case No.
TWC PRODUCT AND TECHNOLOGY LLC,) 4:20-cv-03842
Defendant.) JST (JSC)
_____)

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VIDEOTAPED VIDEOCONFERENCE DEPOSITION
OF SERGE EGELMAN, Ph.D.
FRIDAY, JULY 22, 2022

JOB NO.: 5331337
(Pages 1 through 121)
REPORTED BY TARA SANDFORD, CSR NO. 3374, RPR
(Pages 122 through 189)
REPORTED BY MONICE CAMPBELL, CSR NO. 14171, RMR, CRR

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1 today?

2 A. Correct.

3 Q. Did you get a copy of the protective order in
4 this case?

5 A. Probably. I mean, I signed it, so I must have.
6 I signed it so, therefore, I certainly have saved a copy
7 of it.

8 Q. Okay. So you remember signing the protective
9 order?

10 A. I believe so, yes. Do you want me to
11 double-check?

12 Q. No. I'll take your word for it. That's fine.
13 I just want to make sure you're aware of the protective
14 order and the obligations thereunder.

15 Were you asked to make any assumptions in
16 preparing your report?

17 A. I was asked to examine the opposing reports and
18 assess them and that was it. That's what I did.

19 Q. Okay. So counsel didn't ask you to make any
20 assumptions?

21 A. Not that I recall.

22 I guess one assumption is I was given a subset
23 of the data to look at, so I didn't look at exactly the
24 same data as the -- that the Snow report used. So I'm
25 assuming the data I was shown is consistent with the

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1 rest of the data, but I guess that would probably be the
2 only assumption.

3 Q. What's your understanding of the alleged
4 conduct that plaintiff contends was improper in this
5 case?

6 A. That the disclosures in the app were misleading
7 with regard to how location data would be used.

8 Q. And when you say the disclosures in the app,
9 you mean the TWC app?

10 A. Yes.

11 Q. And are you referring to both the Android
12 disclosure and the -- well, let me back up.

13 When you say disclosure, are you referring to
14 the location access permission prompt?

15 A. Yeah. Specifically, I mean, the one -- there's
16 the one on iOS, but I believe there was also some text
17 on a splash screen in the Android version. I would have
18 to go back to the screenshots in my report to -- to
19 look.

20 Q. Okay. And when you say the disclosures in the
21 app were misleading, you're -- and then you responded
22 that it was the -- there's the location access prompt in
23 iOS and then some text on a splash screen in the Android
24 version.

25 You understand that there is a -- like a

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1 section.

2 What documents did you review --

3 Let me put it this way: Which documents did
4 you rely on to prepare your report?

5 A. The -- the reports that I was responding to.
6 Beyond that, there was, you know, in terms of -- I guess
7 it depends on your definition of document. But, I mean,
8 I looked at the other reports, and I looked at, you
9 know, some subset of the data that was considered in
10 drafting those reports.

11 Q. Typically, these reports under the rules are
12 supposed to have a -- a section that lists documents
13 relied on. And we just noticed that your report doesn't
14 include that.

15 You have two reports and -- so you relied on
16 Dr. Snow's report, Dr. Hanssens' report, the subset of
17 the data that you reviewed. We will come back to that.

18 What else did you rely on?

19 A. My expertise. As an academic, I review upward
20 of 100 papers a year as part of the peer-review process
21 for international journals and conferences.

22 And, you know, generally in writing, you know,
23 a review as part of the peer-review process, you don't
24 necessarily include, you know, citations to every
25 reference material when the issues that you are pointing

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1 out are -- should be obvious to another, you know,
2 trained expert in the field.

3 Certainly, you include citations if there is
4 some, you know, you know, relevant, you know,
5 contemporary research that -- that needs to be included.
6 But in terms of, you know, bias -- why experimental
7 design is flawed, it's just, you know, usually in my day
8 job that's just not usually done in a review of a paper
9 when the issues are obvious.

10 Q. I notice you don't include any citations to any
11 other authority in your report; correct?

12 A. No, because, I mean, again, most of the issues
13 that I -- that I outlined, I think any other expert,
14 they should be obvious to.

15 Q. What about to a court?

16 MR. PRICE: Object to the form.

17 You can answer.

18 THE WITNESS: Maybe that was a failure on my
19 part then. I'm happy to -- I am happy to revise the
20 report with citations to all of the issues that I
21 outlined.

22 MR. BROOME: No, thanks.

23 Q. Okay. Aside from the Snow report, the Hanssens
24 report, the subset data that you reviewed and articles
25 that you have reviewed, did you rely on anything else in

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1 preparing your report?

2 A. Examining the apps. But is that considered a
3 document? So, you know, the main thing was looking at
4 the data that was collected, looking at their
5 methodologies, and looking at what was actually shown in
6 the apps.

7 Q. Okay. And I think in your report you said --
8 you examined several prior versions of the iOS and
9 Android apps.

10 A. Uh-huh. I have screenshots of them in there, a
11 couple of the versions.

12 Q. Where did you get those?

13 A. I mean, these are publicly released apps.

14 Q. The prior versions are still available online?

15 A. Yeah, there are archives on the Internet where
16 you can download prior versions of publicly released
17 apps. Even the iTunes store there is a way of
18 downloading prior versions.

19 But I mean, if you dispute the contents of the
20 disclosures and the versions I evaluated, I mean,
21 clearly your client has the original versions. And they
22 can introduce, you know, different disclosures if they
23 think that I got something wrong in terms of what
24 versions showed which disclosures.

25 Q. Would you defer to that?

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1 A. What do you mean?

2 Q. I mean, if our client did introduce different
3 versions and said, you know, this is the prompt that was
4 in effect during a certain period of time based on their
5 records, would you defer to that?

6 MR. PRICE: Object to the form.

7 THE WITNESS: I think if they made -- I think
8 if they made the app binaries available, you know, so
9 they could be independently tested to see what
10 disclosures were present, and if those differed from the
11 same app binaries that I was able to find and produce
12 disclosures from, then I think that would be -- that
13 would be a reasonable thing to do.

14 But, you know, clearly your client hired two
15 experts who said that this is the only disclosure that's
16 relevant during this time period, and that's empirically
17 false.

18 Q. BY MR. BROOME: Is it your understanding that
19 those two experts were giving their expert opinion as to
20 what --

21 A. I don't know --

22 Q. Or were they just making assumptions?

23 A. I don't know how they arrived at that, but both
24 reports focus on a single disclosure and imply that
25 that's the only disclosure that's at issue and that

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1 disclosure somehow generalizes to all the disclosures
2 available during the class period. That's what's in
3 their reports.

4 How they arrived at that, I honestly couldn't
5 tell you. I didn't write those reports.

6 Q. Where did you -- exactly where on the Internet
7 did you find the old versions?

8 A. I couldn't tell you off the top of my head but,
9 you know, for -- certainly for -- there are many sites
10 for Android that do this. There are a few for iOS and,
11 again, even the iTunes store. There used to be a way
12 that you can use the official iTunes store to download
13 earlier versions.

14 Q. When you say there used to be a way, when did
15 that stop, to the best of your knowledge?

16 A. I -- I don't -- I mean, as of right now, I have
17 not, you know, done it again to download older versions
18 directly from the iTunes store, so I don't know if you
19 can still do that or not.

20 At the time that I did it, I was able to get --
21 download versions of the app directly from the iTunes
22 store so that I could then look at the historical
23 versions of the disclosures.

24 Q. Okay. When did you do that?

25 A. I don't recall off the top of my head.

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1 Q. All right. And the versions that you
2 downloaded were not versions that were produced in this
3 case?

4 A. Again, it didn't come directly from your
5 client, but this is software that they publicly
6 released. And so for them to be surprised that someone
7 found software -- it seems odd that they are surprised
8 that someone found software they publicly released.

9 If they dispute the content, you know, of the
10 disclosures, then they should produce the binaries so
11 they could be evaluated to see whether the disclosures
12 that I captured were incorrect. You know, that's
13 empirical. Someone can answer that question.

14 Q. Which versions did you download?

15 A. I don't recall off the top of my head. But I
16 went through a sequence to look at whether -- you know,
17 when the disclosures changed based on the version and
18 approximate release date.

19 Q. And the versions that you downloaded are not
20 reflected in your report; right?

21 A. I didn't mention all of the versions. I just
22 mentioned that it is incorrect in the Hanssens and the
23 Snow report to say that this is the only disclosure that
24 was shown to users of this app during the time period.

25 Q. You said you didn't mention all the versions.

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1 You didn't mention any of the versions that you tested;
2 right?

3 MR. PRICE: Object to the form.

4 THE WITNESS: I reported time periods during
5 the class when the disclosures differed from the
6 disclosures that are reflected in both of those reports.

7 Q. BY MR. BROOME: But you didn't actually say in
8 your report which versions you tested; correct?

9 MR. PRICE: Object to the form.

10 THE WITNESS: I didn't include the version
11 number. I included the approximate release dates when
12 certain disclosures were present.

13 Again, I'm happy to amend it with -- I can
14 amend the report with citations and version numbers, if
15 that would be helpful, but it seems a little bizarre,
16 given it's your client that produced the software, and
17 they clearly have the original copies. And if they
18 dispute the screenshots I made, they can certainly share
19 the binaries so others could make screenshots.

20 Q. BY MR. BROOME: Did you review the Complaint in
21 this action?

22 A. Yeah, I believe so.

23 Q. Which version?

24 A. I honestly don't remember. As a matter of
25 course, whenever I'm contacted about one of these cases,

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1 location to be collected, that's -- that's why -- that's
2 something that an experiment would determine.

3 Q. Do you believe that the prompts on the
4 left-hand side and the middle of Figure 1 are materially
5 different?

6 MR. PRICE: Object to the form.

7 You can answer.

8 THE WITNESS: My personal opinion, yes. They
9 use different language. I mean, personalization, you
10 know, might be some, as for many people, targeted
11 advertising. That is why focusing on whether or not
12 personalization, you know, whether the message using
13 personalization was effective I think is a bit of a red
14 herring here because that seems like it's likely to
15 mislead.

16 But, again, that's a personal opinion, and
17 that's something that could be answered by real data if
18 you actually did a proper, you know, scientifically
19 rigorous study. But that wasn't done, so it is hard to
20 draw any conclusions.

21 Q. BY MR. BROOME: So the middle prompt in Figure
22 1 says, "You'll get personalized local weather data
23 alerts and forecasts."

24 And your view is that a user might associate
25 the words "personalized" with "advertising"?

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1 MR. PRICE: Object to the form. Outside the
2 scope.

3 THE WITNESS: Potentially. I'm speculating,
4 but that's the type of hypothesis that one would test
5 with a controlled experiment. But because a controlled
6 experiment wasn't properly done, it's just speculation
7 about what people are likely to interpret that to mean.

8 Q. BY MR. BROOME: What is AppCensus?

9 A. AppCensus is a company that was spun off of my
10 research that does privacy analysis of mobile apps.

11 Q. Are you aware of an article titled "Your App
12 Knows" -- "Apps Know Where You Were Last Night and
13 They're Not Keeping It a Secret," published in the New
14 York Times on December 10, 2018?

15 A. Yeah. That used -- that used some of my data.
16 I was on background.

17 Q. Right. You were consulted for the article?

18 A. Yep.

19 Q. Do you recall another article published in the
20 New York Times titled "How the Times Analyzes Location
21 Tracking Companies"?

22 A. I think that, yes, and that talked about using
23 my data to write the article.

24 Q. We talked earlier about how the -- there's an
25 Android prompt and then there's an iOS prompt, and you

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1 understand that the language used on those prompts is
2 different; right?

3 A. Yes.

4 Q. And the Android prompts, there's no purpose
5 string; right?

6 A. (Nods head affirmatively.)

7 Q. It just asks question, you know, basically just
8 asks permission to access location?

9 A. Right.

10 Q. Do you have an understanding as to whether app
11 developers during the relevant period were able to
12 modify that Android prompt?

13 MR. PRICE: Object to the form.

14 THE WITNESS: The prompt that is on the Android
15 is drawn by the operating system, and developers cannot
16 alter that.

17 Whereas, on iOS, developers can optionally
18 provide what's called a purpose string where it's a
19 sentence that gets included in the system drawn prompt
20 that has the developers' message about why they want
21 access to the data.

22 I studied this, I guess, about 10 years ago. I
23 have a published paper on this, on the purpose strings
24 when Apple first introduced them.

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1 Q. BY MR. BROOME: With respect to your comments
2 on Dr. Snow's report, do you have any opinions or
3 criticisms about Snow's -- Dr. Snow's report with
4 respect to the portions that relate to the Android
5 version of the app?

6 MR. PRICE: Object to the form.

7 THE WITNESS: I didn't read Snow's report too
8 closely because there were so many inaccuracies at the
9 beginning with regard to the iOS data collection that I
10 thought that was disqualifying enough and that it wasn't
11 really worth the time to read the rest of the report
12 because, you know, for instance, you know, he focuses
13 on, again, a single prompt and assumes -- and implies in
14 his report that's the only prompt that users saw, which
15 is not the case.

16 But worse, what's not said in the report, is
17 based on the log data, it's not clear if you can deduce
18 which prompt was shown to a user and when. Because
19 without looking at what version of, you know, iOS and
20 what version of the app they have installed in doing his
21 analysis and whether or not a user with that unique
22 identifier has seen the prompt for the first time, it's
23 really impossible to say from just the log data that he
24 looked at what prompts users were shown and when. And
25 therefore, it's -- the rest of the report just falls

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1 why I said, you know, most of -- you know, I focus on
2 the prompts that did change more frequently and not just
3 the Blue Screen.

4 Q. BY MR. BROOME: Right. But you understand that
5 Dr. Snow's opinion is not focused on how users reacted
6 to the prompt that is at issue in this case. He is
7 looking at how users, the entire user base changed in
8 terms of location-sharing preferences, downloads and
9 uninstalls after certain events, including the launch of
10 the January 25, 2019, prompt and the April 2019 Blue
11 Screen; right?

12 MR. PRICE: Object to form.

13 You can answer.

14 THE WITNESS: Yeah, I understand that. But,
15 like, the case is not limited to what happened after
16 2019. There were disclosures prior to 2019 that
17 prompted TWC to change the disclosures.

18 Q. BY MR. BROOME: But if one is looking at how
19 users change in terms of the metrics identified in
20 Dr. Snow's report after January 25, 2019, and April 24,
21 2019, it doesn't really matter which version of the
22 prior prompt was in effect during which month, does it?

23 MR. PRICE: Object to the form.

24 THE WITNESS: I don't know. I guess -- as I
25 said, I didn't focus on that part closely.

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1 criticisms of his report, and you -- you said in
2 response to one of my questions, "If you want me to
3 amend the report with other issues, I can read this in
4 more detail and highlight other issues. Given that the
5 iOS part, he's commenting on what disclosures from the
6 pop-ups in iOS, you know, given that is factually wrong,
7 and that's -- that it's not possible to tell which
8 disclosures of that part of the report were shown to its
9 users, it is hard to give much credibility to any of the
10 other findings in this report either."

11 Do you recall giving that testimony?

12 A. Yes.

13 Q. And so is it your opinion that there's
14 something factually wrong with the report, that the
15 whole report should be disregarded?

16 MR. PRICE: Object to the foam.

17 You can answer.

18 THE WITNESS: It depends on circumstances. So
19 in this case a big part of the report is this assumption
20 you can identify which disclosures were shown to which
21 users and -- and what their reaction means. Part of
22 that -- part of how he uses that is wrong in that, you
23 know, it's not clear that you can actually know which
24 iOS users saw which disclosures.

25 Given that, it -- that's a pretty big claim,

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1 and that's why I would be skeptical about the rest but
2 didn't really pay close attention to the rest because,
3 again, I thought that issue was so disqualifying.

4 Q. BY MR. BROOME: And if it turned out that
5 Dr. Snow was correct, and you were wrong regarding the
6 dates in which the prior prompt was in effect, would
7 that mean your whole report should be disregarded?

8 MR. PRICE: Object to the form.

9 THE WITNESS: No, because that's immaterial,
10 the specific dates. If I'm -- if I'm wrong about what
11 users saw and -- and how to measure reaction to them,
12 and that's the main thing that my report is
13 contributing, then, yes. But, you know, being wrong
14 about the dates isn't really a material error. Yet
15 be -- well . . .

16 Q. BY MR. BROOME: Being wrong about the dates
17 isn't a material error if it's -- if we're talking about
18 your report; it is a material error if we are talking
19 about Dr. Snow's report?

20 MR. PRICE: Object to the form.

21 THE WITNESS: No. What is a material error is
22 being able to say from these log files we know exactly
23 which users were shown which disclosures and what their
24 reactions to those disclosures actually mean.

25 Q. BY MR. BROOME: He doesn't say that? Can

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1 opinion.

2 As I said, I looked at the iOS portion. That
3 was flawed, so I -- I didn't really pick much of the
4 Android apart.

5 Q. All of the data that was provided to Dr. Snow
6 was provided to you; correct?

7 A. No.

8 Q. Did you ask for it?

9 A. Yeah. Apparently, there were some issues with
10 your folks being able to find the right password to --
11 to decrypt the data. I was told that it is just more of
12 the same, and so it didn't seem necessary.

13 Q. But we did decrypt the data. Did you not get
14 access to the full dataset?

15 A. I did not get access to the full dataset, no.

16 Q. In Opinion 3, he writes, "On average, users of
17 the iOS app share location data with TWC at different
18 rates as compared to users of the Android app, and these
19 relative rates changed over time."

20 Do you see that?

21 A. Okay.

22 Q. Do you dispute that opinion?

23 A. Again, I have no -- I have no basis to really
24 evaluate it either way without looking at the data and
25 making the same calculation.

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1 A. No, I'm not. I am talking about --

2 Q. Hold on. Wait. Wait. Let me finish my
3 question.

4 If we just focus on the launch of these
5 prompts, right, those --

6 Well, let me ask you this: Do you have any
7 basis to dispute that the L.A. City Attorney
8 Complaint -- filing of the L.A. City Attorney Complaint
9 does not correspond to a material change in user
10 behavior?

11 A. Sorry. What?

12 Q. In 23 Dr. Snow says -- let me go back down
13 here. 27, I think we're at, we're in subparagraph 4 --
14 strike that.

15 All right. We will come back to this one.

16 Do you still have the prior versions of the app
17 that you downloaded?

18 A. I actually need to check because I have -- I
19 had a whole bunch of prior versions, that and a bunch of
20 other apps as I was going through and purging files for
21 other related stuff when I came across them and realized
22 that, yeah, that I had a lot of apps, old app versions
23 sitting around from various other things.

24 Q. Are they downloaded to your personal device
25 or --

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1 any difference to Dr. Hanssens' results if he used that
2 prompt instead of the purpose string in the prompt in
3 the middle of Figure 1; right?

4 A. My -- what I'm telling you is that you can't
5 draw any conclusions about people's reactions either way
6 to any of the other prompts without explicitly testing
7 them.

8 MR. BROOME: Okay. Let's load Tab 9, Casey.

9 (Whereupon, Exhibit 3 was marked

10 for identification by the Court Reporter

11 and attached hereto.)

12 Q. BY MR. BROOME: Dr. Egelman, do you have an
13 understanding of what the relevant time period is in
14 this case?

15 MR. PRICE: Object to form.

16 You can answer.

17 Q. BY MR. BROOME: Or the class period?

18 A. No, not the specifics. No. I mean, I gather
19 it was around 2019. I thought it predates that, given
20 the timelines in both the other reports. But in terms
21 of the actual specific date, I would have to go back and
22 look at the Complaint.

23 MR. ADAMS: Dr. Egelman, you will need to
24 refresh your Exhibit Share.

25 THE WITNESS: Oh, I'm sorry. I didn't realize

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1 TWC's uniform conduct and policies impacted thousands of
2 Californians."

3 And then they write, "The inadequate
4 disclosures were functionally uniform and never gave
5 notice of the scope and depth of TWC's practices."

6 Do you see that?

7 A. Uh-huh. Yep.

8 Q. And then it says, "During the relevant
9 period" --

10 If you go down a bit to line 15, it says,
11 "During the relevant period, the permission prompts for
12 iOS users stated 'Either we use your location to provide
13 you with accurate weather data and forecast' or 'you'll
14 get personalized local weather data, alerts and
15 forecasts.'"

16 If you drop down a line it says, "Android users
17 prompt said, 'Allow the weather channel to access this
18 device's location with options to deny or allow.'"

19 Do you agree those three prompts are all
20 functionally uniform?

21 MR. PRICE: Object to the form. Outside the
22 scope.

23 THE WITNESS: No. We went over this. It's
24 hard to form any sort of opinion whether those are
25 equivalent to each other without actually doing

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1 rigorous, you know, studies of it.

2 Q. BY MR. BROOME: Are you aware of any study
3 that's been conducted to support that assertion?

4 MR. PRICE: Object to the form. Outside the
5 scope.

6 THE WITNESS: Which assertion?

7 Q. BY MR. BROOME: The assertion that the
8 disclosures -- the disclosure -- excuse me. The
9 assertion that the prompts that are described on page 2
10 of plaintiffs' class certification motion are
11 functionally uniform.

12 MR. PRICE: Object to the form. Outside the
13 scope.

14 THE WITNESS: I guess I'm not sure what is
15 meant by "functionally uniform."

16 Q. BY MR. BROOME: Are you aware of any study or
17 survey that's been conducted to determine whether the
18 prompt language elicits different reactions from
19 different users?

20 MR. PRICE: Object to the form. Outside the
21 scope.

22 THE WITNESS: As I said, my lab performed such
23 a study about a decade ago when these prompts were first
24 released. And we found that the effects of including
25 the prompt resulted in greater compliance rates, but

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1 likely to understand what I understand from these
2 messages as an expert.

3 And so if Dr. Hanssens, to the extent that he's
4 making conclusions about what consumers are going to
5 understand about these, he can't really make those
6 claims without, you know, testing that consumer
7 understanding is identical.

8 Q. Well, when plaintiffs write, "TWC provides
9 substantially identical representations to all class
10 members to obtain access to their location data," you
11 understand they are talking -- they mean they are
12 substantially identical to consumers; right?

13 MR. PRICE: Object to the form. Outside the
14 scope.

15 THE WITNESS: I -- I don't know that.

16 Q. BY MR. BROOME: Okay.

17 A. I mean, as an expert I'm reading -- I can read
18 those as an expert and say that these are identical in
19 substance in that they both omit secondary data uses.

20 Q. Okay. Let's assume, then, that plaintiffs are
21 writing this because they are trying to convince the
22 court that consumers would all interpret these
23 disclosures to be substantially identical.

24 Is it your opinion that from a consumer's
25 perspective that the prompts in effect during the

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1 relevant period were substantially identical?

2 MR. PRICE: Object to the form. Outside the
3 scope.

4 THE WITNESS: I don't agree with your premise.

5 Q. BY MR. BROOME: Which is what?

6 A. You said, you know, assuming they are identical
7 to the average consumer. And I'm saying, like, we can't
8 assume that.

9 Q. Yeah, that's what I mean, right. Your opinion
10 is one cannot assume that from a consumer's perspective
11 the prompts in effect during the relevant period were
12 identical?

13 MR. PRICE: Object to the form. Outside the
14 scope.

15 THE WITNESS: From a consumer's perspective
16 without evaluating that, we can't know for sure, no.

17 Q. BY MR. BROOME: All right. Let's go back to
18 your report, Exhibit 1.

19 A. Yep.

20 Q. Page 2.

21 A. Yep.

22 Q. Okay. You write, "Both reports" -- I'm on the
23 second paragraph. "Both reports focus on the disclosure
24 shown in the center of Figure 1, which tells users that,
25 if allowed, you'll get personalized local weather data,

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1 Q. I think I asked you this before, but just bear
2 with me.

3 You don't remember which device you downloaded
4 the -- the app versions to when you were testing them;
5 right?

6 A. I mean, I have several test devices at home,
7 but I don't -- as I said, when I test the apps, I'll
8 then uninstall them on the devices and whether I keep
9 the binaries around after I do the testing totally
10 depends on the circumstances. So I would need to check
11 whether I still have the apps.

12 But again, this seems really silly, given that
13 they are apps that were published by your client.

14 Q. What year are the devices that you potentially
15 used?

16 A. It totally varies. I have, like, 20 or 30
17 mobile devices here in my office.

18 Q. All right.

19 A. But I mean, I don't -- I don't think anyone is
20 alleging different -- different disclosures were shown
21 based on the device beyond the platform differences.

22 But again, that's -- I mean, that seems
23 immaterial to my report in that the whole point of
24 Figure 1 is to just show that there were different
25 purpose strings throughout the class period.

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1 report, I found an online viewer and just pasted a
2 screenshot, rather than just putting the raw text here.
3 But that was after verifying that the data was the same.

4 Q. How did you verify that the data was the same?

5 A. By looking at it.

6 Q. How much of the data did you look at?

7 A. I mean, what's in the screenshot here.
8 Certainly, you know, the relevant pieces. But the --
9 I -- I don't think it would be different but, again,
10 this is -- this is empirical if you're disputing that,
11 the accuracy of the screenshot. You know, the nice
12 thing about the uniquely identifying data that you
13 collected is that you can take one of these identifiers
14 and search your dataset and see exactly where I pulled
15 this from the dataset that you have.

16 Q. Did you review data just for one identifier?

17 A. I skimmed the data that was given to me, and I
18 looked at what are known as the key value pairs, so the
19 different variable names, to try to make sense of the
20 types of data that were collected. And -- and then I
21 decided to put in a representative screenshot of the
22 data in an easier to read format.

23 Q. How many files did you look at?

24 A. I don't remember off the top of my head but,
25 again, you know, this is gigabytes of data, so I looked

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1 And I also don't know -- I don't know the data
2 that I wasn't shown. I don't know where that came from
3 either. Yeah, so I don't know what came from Localytics
4 and what came from other third parties.

5 Q. How much time did you spend looking at the
6 Localytics data?

7 A. Again, I don't know the sources for all the
8 data, which data came from which sources, but in terms
9 of -- even so, the data analysis, generally I would have
10 to go to my invoices to look at how much time I spent.

11 Q. Approximately?

12 A. As I said, my total involvement in this case, I
13 think, prior to the deposition is under 20 hours. So,
14 obviously, it is some subset of that.

15 Q. Okay. When you say you don't know which data
16 came from which source, Figure 2 says the data is
17 transmitted to Localytics from the TWC app.

18 So at least that screenshot comes from
19 Localytics data that was provided to you; right?

20 A. That's what I was told, yes.

21 Q. And then you're saying that with respect to the
22 document cited on page 4 of your report, TWC Hart
23 000010956, you're not sure whether the data in there
24 came from Localytics or some other source?

25 A. Correct. I don't know where that data came

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1 from. It was -- you know, it was data that was
2 consistent with this and that it had unique identifiers
3 for each of the users. I was told it's data that came
4 from TWC, and it also had GPS coordinates in it with
5 five decimals of precision.

6 Where it came from, I don't know. I didn't ask
7 because that didn't seem relevant. I was told it
8 came -- it was data that the app collected, which seems
9 to be the main material issue.

10 Q. When you put the data -- sorry. Do you
11 remember the -- I don't know if I asked you this or not,
12 but do you remember the name of the online viewer that
13 you used?

14 A. For which?

15 Q. In order to review the Localytics data.

16 A. I didn't use an online viewer to review the
17 Localytics data. After I found a snippet of data that
18 seemed, you know, interesting for a screenshot, I then
19 pasted it into an online viewer so it would print it in
20 an easier format for the reader of the report.

21 Q. Do you remember the name of that online viewer?

22 A. No. I mean, there are many of them online.
23 Again, if you are disputing the veracity of the data,
24 that is something you can easily check.

25 Q. I am a little more concerned about the data

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1 know, my line of work generally, I'm very familiar with
2 the data interchange formats, and it's very common to
3 see data with these labels refer to these specific data
4 types.

5 But, you know, again, your client set the
6 format. So if you dispute specific things in here, you
7 have the information to do that.

8 Q. You can't say definitively that all the fields
9 that are reflected in Figure 2 are populated for the
10 entire dataset; correct?

11 A. No.

12 MR. PRICE: Object to form.

13 THE WITNESS: No. I actually noticed that
14 sometimes some of these fields are missing, so it's
15 not -- it's not clear why that is the case, but that
16 doesn't surprise me at all.

17 Q. BY MR. BROOME: Okay. Do you see in Figure 2
18 the fourth field down is "birthdate"?

19 A. Yep.

20 Q. And it says 2016-07-18.

21 A. Uh-huh.

22 Q. It obviously doesn't reflect the user's
23 birthdate; right?

24 A. I don't know what that does or does not
25 reflect. Maybe it does reflect the user's birthdate.

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1 Maybe it reflects the birth of the device, when the
2 device was first, you know, bought or turned on. Maybe
3 it reflects something else entirely. I have no idea
4 what that particular one reflects.

5 Q. Okay.

6 A. But your client certainly does.

7 Q. Are there any other fields in the list -- well,
8 let me ask you this: Is Figure 2 a complete list of all
9 fields that are in the dataset?

10 A. No. As I -- you know, I already said this.
11 It's -- I thought it was somewhat representative and
12 instructive, which is why I chose to make a screenshot
13 of it in particular. But, you know, and I already said
14 some of the fields actually differed from, you know, one
15 data point, so to speak, to the next.

16 I mean, if one had the whole dataset, it would
17 be pretty easy to enumerate all of the different fields
18 in there. And certainly -- again, your client, though,
19 created the names and defined those fields. And so what
20 each of these fields represents shouldn't be a mystery
21 to them.

22 Q. Are there any other fields reflected in Figure
23 2 where you're not sure or for which you're not sure
24 what they mean?

25 A. Any, other than what? Other than the birthdate

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1 Do you see that?

2 A. Uh-huh.

3 Q. Did you do this?

4 A. I mean, I could do it if I had -- you know, if
5 I had the full dataset in front of me. It would take a
6 little bit of time but, yes, I could write some scripts
7 to parse the data to map exactly where users were, you
8 know, over time.

9 Q. Okay. But you haven't attempted that at
10 this -- at this point?

11 A. I wasn't asked to.

12 Q. And could you do it even if the region field
13 was not populated for a substantial portion of the
14 entries?

15 A. I think -- I guess it depends what other data
16 is in those entries.

17 Q. Is there any other data that's in the fields,
18 in Figure 2, that would allow you to determine whether a
19 user is in any given state?

20 A. As I said --

21 MR. PRICE: Object to form.

22 THE WITNESS: As I said, I don't know. Based
23 on my experience with this, I pulled out some examples
24 of fields where the -- you know, based on the name and
25 the value there, the purpose was obvious. But as you --

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1 as you established, there are many here that I don't
2 really know definitively what they represent. So it's
3 possible there is other data in there that could be used
4 to determine location.

5 But we also know that this data in conjunction
6 with other datasets could be used to do that, as well.
7 And also, this doesn't even consider whether the IP
8 address was captured. So, you know, for every
9 transmission on the Internet, the recipient gets the IP
10 address of the center and so, you know, if that's saved,
11 even just in the course of standard logging, you could
12 go back and use those IP addresses to get an approximate
13 location for every user in the dataset.

14 Q. BY MR. BROOME: IP address is often not a
15 reliable indicator as to where somebody is actually
16 located; right?

17 MR. PRICE: Object to form.

18 THE WITNESS: It varies. It varies, and it
19 really depends on the circumstances.

20 For mobile devices, it's actually pretty
21 effective.

22 Q. BY MR. BROOME: Did you attempt to combine the
23 Localytics data with any other data for purposes of
24 determining or confirming your assertion that the data
25 could be used to identify how many unique users were

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1 Do you see that?

2 A. Yes.

3 Q. Okay. What identifier -- when you say "these
4 identifiers," which identifiers are you referring to?

5 A. So on the previous page, the user uuid, device
6 uuid, those are all unique identifiers of the user. And
7 so, again, this is an Android device. This appears to
8 be the Android ID, which is a unique identifier. And
9 that's a field -- that's unique for every user's device.
10 And it's also a field that data brokers collect.

11 So when they collect other data from other
12 first and third parties, they key that data to the same
13 identifiers. And so just from this data that the TWC
14 app sends, that's linkable to data -- data -- profile
15 data on users that are stored by other data brokers.

16 Q. Do you know whether TWC makes any data
17 available to data brokers?

18 A. I have no idea what happens to the data after
19 TWC receives it.

20 Q. Okay. So when you say you're "confident that
21 these identifiers are linkable to other persistent
22 identifiers collected previously and that user profiles
23 can be created that identify users -- identify
24 individuals' physical locations over time, their
25 routines, relations, interactions and their preferences

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1 THE WITNESS: Based on my significant expertise
2 in the area, I think it's -- it's a reasonable
3 assumption. But no, only your client -- only your
4 client knows for sure what that field means. And
5 possibly Localytics does, as well, if this is where that
6 data came from.

7 Q. BY MR. BROOME: Did you review Dr. Snow's
8 deposition transcript in preparing your report?

9 A. I don't believe so. I don't believe I saw any
10 depositions. I don't believe -- I mean, I didn't -- in
11 preparing the report, no. But I don't know if at any
12 time -- again, my report is based entirely on just
13 reading their reports, both of those reports.

14 Whether I saw the deposition, either before or
15 after, you know, I honestly don't -- I don't recall it.
16 But, you know, if I were told that I did -- I was sent
17 the deposition, it wouldn't surprise me.

18 Q. In a second sentence on the top paragraph on
19 page 4 you write, "For example, this data appears to
20 readily show how many users were located in a given
21 state on a given day."

22 Do you see that?

23 A. Yes.

24 Q. Are you aware that Dr. Snow testified that his
25 analysis indicated that the state field or the region

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1 field was missing, was not populated for approximately
2 60 percent?

3 A. Again, I -- I was not shown that. I saw a
4 subset of the data.

5 Q. Yeah. So you have no basis to dispute that
6 then?

7 A. I have no basis to dispute that.

8 MR. PRICE: Object to form.

9 THE WITNESS: But, again, based on the previous
10 question, I think that is also kind of immaterial
11 because there is sufficient data here -- you know, there
12 seems to be sufficient data for many of the users. And
13 also, if 60 percent of the region data was missing, it's
14 not clear whether that means for 60 percent of the users
15 or just 60 percent of the data points didn't have region
16 data. Maybe the app sends out the region data
17 periodically and not consistently. That would explain
18 that, but it also wouldn't -- it has no bearing on the
19 ability to map, you know, where the users of the app are
20 located.

21 I am going to fill up my water five feet away.
22 I can still hear everything.

23 Q. BY MR. BROOME: In the next sentence you write,
24 "The version of the TWC app that was first used by any
25 given user correlates to one of the three permission

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1 I don't think he makes that assumption. But is
2 there -- can you point me to a paragraph in his report
3 where he makes that assumption?

4 A. That's the point of an event analysis is, you
5 know, in analyzing the behavior after the event to see
6 if the event, you know, correlated with appreciable
7 change in the behavior. But in this case, if you don't
8 know who is exposed to the event, you can't really do
9 any sort of analysis.

10 Q. You know that new users are very likely exposed
11 to the event, so that could be what he's analyzing;
12 right?

13 A. Maybe; maybe not. Because --

14 Q. Do you know what he's analyzing?

15 A. No.

16 MR. PRICE: Object to form.

17 THE WITNESS: Again, like that should have
18 been -- if he did control for all of these things, that
19 should have been put in the report. But the report as
20 written, I don't know what he actually did. I was just
21 asked to review his report.

22 And based on his report, these are my questions
23 about whether he did these things to correct for these,
24 you know, potentially catastrophic confounding factors.

25 Q. BY MR. BROOME: Well, one of the catastrophic

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1 THE VIDEOGRAPHER: We're back on the record.

2 The time is 1:17 p.m.

3 BY MR. BROOME:

4 Q. Dr. Egelman, in Section 2 of your report, which
5 is titled "background," from the last paragraph on
6 page 2 until the end of the section, you are offering
7 opinions, right?

8 A. Let me read them.

9 No. And there's no opinion in there.

10 The Snow's report there was data used to create
11 Snow's report. Not all of that data was shared with me.
12 That's a factual statement. Both of those are factual
13 statements.

14 I was told that the data -- some of the data
15 came from Localytics. That's another factual statement.

16 And that the app originated from the TWC app.
17 That's another factual statement. There's no opinion in
18 there.

19 Q. I think you might have misunderstood my
20 question.

21 I said, from the last paragraph on page 2 until
22 the end of the section.

23 A. Oh, sorry. Okay. So which opinion are we
24 referring to?

25 Q. Well, you say -- for example, on page 3, you

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1 say, "Based on my knowledge of the mobile app system and
2 how data is transmitted between mobile apps and remote
3 servers, this data appears to contain the following
4 information." Right? That's one opinion and you list
5 out the information, right?

6 A. Yes.

7 Q. Okay. And then the paragraph on page 4 has
8 several other opinions about identification of users and
9 whether, you know, the data could be linked to them and
10 used to create profiles, right?

11 A. Yes.

12 Q. Which opinions of Dr. Snow's or Dr. Hanssens'
13 are you responding to in offering those opinions?

14 MR. PRICE: Object to the form.

15 THE WITNESS: I'm putting those reports in
16 context. So that's why this section is labeled
17 "background," and, again, those aren't opinions I'm
18 offering there. This is based on significant expertise,
19 you know, and experience looking at, you know, mobile
20 apps and third-party data recipients and how they
21 transmit data. You know, based on that experience, this
22 is -- and, you know, given the values and the labels on
23 them presented here, you know, this is almost certainly
24 what those correspond to.

25

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1 BY MR. BROOME:

2 Q. Those are not opinions in paragraph 4?

3 MR. PRICE: Object to the form.

4 THE WITNESS: Paragraph 4? Sorry.

5 BY MR. BROOME:

6 Q. I'm sorry, page 4, first paragraph. My
7 mistake.

8 A. No, that is not opinion. Which part of that
9 are you alleging is an opinion?

10 Q. Well, really I mean the whole part. Let me
11 take the statement. "Based on my experience and
12 expertise, I am confident that these identifiers are
13 linkable to other persistent identifiers collected
14 previously from other sources and that user profiles can
15 be created that identify individuals' physical locations
16 over time, their routines, relations, interactions and
17 their preferences and interests based on other websites
18 and mobile apps that they use."

19 Your view is that is not an opinion?

20 A. No. That's fact. I mean, these are unique
21 persistent identifiers. This is how the whole mobile
22 app ecosystem functions. It relies on these identifiers
23 to be linkable across different data sources.

24 And so by putting, you know, the unique
25 identifier in here along side this data, that allows it

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1 to be used for these other purposes and combined with
2 other data sources. That's absolutely fact.

3 Q. Do you understand that when you -- when a fact
4 is disputed and an expert is brought in to give their
5 view as to which side has got it right, that is expert
6 opinion?

7 MR. PRICE: Object to the form. Outside the
8 scope.

9 THE WITNESS: I haven't heard any dispute about
10 what I've said here. I mean, this is my area of
11 expertise, and I'm telling you that persistent device
12 identifiers allow this whole ecosystem to function and
13 this is how they're used in practice and, you know, if
14 this is data is what I'm told it is, then it could be
15 used for these other purposes.

16 BY MR. BROOME:

17 Q. So you didn't see anything in Dr. Hanssens'
18 report or Dr. Snow's report that -- well, I mean --
19 strike that and I'll ask it again.

20 You're not responding -- in the first paragraph
21 on page 4, you're not responding to any of the opinions
22 of Dr. Snow or Dr. Hanssens', correct?

23 MR. PRICE: Object to the form.

24 BY MR. BROOME:

25 Q. Go ahead.

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1 made a different decision based on, you know, learning
2 about the data being collected about them and how it
3 might be used.

4 So understanding what that data is and how it
5 might be use is kind of fundamental to understand his
6 report in its totality.

7 Q. Which of Dr. Snow's opinions are you responding
8 to in the first paragraph of page 4 of your report?

9 A. It contextualizes most of these.

10 Q. Are you done with your answer?

11 A. Yeah, I guess. I mean, I don't really have
12 anything to add to that.

13 Q. Do either Dr. Snow or Dr. Hanssens offer any
14 opinions about whether you could identify how many
15 unique users were using TWC's app in a specified state
16 or region at any given time?

17 MR. PRICE: Object to the form.

18 THE WITNESS: You know, I would have to reread
19 both reports but, again, as I already testified, the
20 reason I put that in there in the section labeled
21 "background" -- excuse me -- is that it's understanding
22 what data was collected and how it might be used is
23 fundamental to understanding what Hanssens and Snows did
24 in their studies and that they documented in their
25 reports.

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1 BY MR. BROOME:

2 Q. Right. But they don't offer any opinions about
3 whether you could identify unique users in a given state
4 or region, right?

5 MR. PRICE: Object to the form.

6 THE WITNESS: In understanding their opinions,
7 it's -- I think it's important to understand how they
8 formed those opinions.

9 BY MR. BROOME:

10 Q. Okay. How does that relate to the question
11 that I just asked you?

12 MR. PRICE: Object to the form.

13 THE WITNESS: It relates because the -- sorry.
14 What was the question again?

15 BY MR. BROOME:

16 Q. Neither Dr. -- neither Dr. Snow nor
17 Dr. Hanssens offers any opinions about whether you can
18 identify a certain number of unique users in a given
19 state or region, right?

20 A. Right. What I said was in understanding how
21 they arrived at that opinion, it's important to
22 understand what they actually did. So they document
23 data analysis that they did and, you know, a consumer
24 survey that was performed in forming those opinions.

25 And so understanding what was actually being

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1 (Exhibit Number 4 was marked.)

2 BY MR. BROOME:

3 Q. We're going to be working off your report, so
4 we'll be focused on Exhibit 1 for now.

5 A. Okay.

6 Q. You write: "The Hanssens' report features a
7 survey in which participants were shown texts that was
8 briefly used by TWC in the app. You'll get personalized
9 local weather data alerts and forecasts." And then you
10 write: "Disclosures in use during the majority of the
11 app's existence were not examined and, therefore, this
12 survey's results cannot be generalized to those other
13 disclosures."

14 And in that second sentence there, you're
15 saying that the survey's results with respect to testing
16 the language "You'll get personalized local weather data
17 alerts and forecasts cannot be generalized to the other
18 disclosure" meaning the -- you'll get accurate local
19 weather?

20 A. Or any other. I mean, it's impossible to say
21 whether people would express the same reaction to
22 different wordings. We went over this already.

23 Q. Okay. And then under "Threats to Internal
24 Validity," you write: "The disclosure shown in the
25 survey were only in use by the TWC app for a fraction of

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1 the class period. Unlike other disclosures used by the
2 app, e.g., we use your location to provide you with
3 accurate weather data and forecasts, the disclosure
4 chosen for the survey specifically used the word
5 personalization." And then you say, "The survey's
6 earlier focus on advertising may have primed
7 respondents."

8 Are you connecting those two concepts there?
9 Are you saying that the words "personalization" would
10 have primed respondents to focus on advertising?

11 A. Potentially. We don't know. That's why I
12 wouldn't design the study like that. I mean, that's the
13 issue. By using the word "personalization," it's
14 possible that some subjects associate the term
15 "personalization" with tailored advertising. That's not
16 a reasonable leap.

17 And so by using the word, it's possible that
18 some subjects were then thinking about advertising when
19 they wouldn't have otherwise if they had simply, you
20 know, been shown that dialogue in context and asked to
21 make a decision in that moment.

22 Q. Okay. Even though the word personalized
23 appears before local weather data, your opinion is that
24 people may still associate the word "personalized" with
25 advertising?

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1 MR. PRICE: Object to the form.

2 THE WITNESS: I think there is a difference in
3 understanding of the terms "personalization" and
4 "personalized local weather data." Yes, I suspect there
5 is a difference in how people would interpret those two
6 phrases but I also don't know definitively and that's
7 why it should have been evaluated.

8 BY MR. BROOME:

9 Q. Well, you could have evaluated it, right?

10 MR. PRICE: Object to the form.

11 THE WITNESS: I could have but I wasn't asked
12 to, so I didn't.

13 BY MR. BROOME:

14 Q. By the way, you say here, "The disclosure
15 chosen for the survey specifically used the word
16 'personalization'." The disclosure actually uses the
17 word "personalized" before "local weather data."

18 There's no material difference there, right,
19 that was just a typo, I suppose?

20 A. I think in the context of my report, that
21 was -- hang on. It doesn't say -- sorry, where is the
22 typo.

23 Q. Well, you -- under "3.1, Threats to Internal
24 Validity," about four lines down, you have
25 "personalization" in quotes?

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1 is a difference in how people would interpret those two
2 phrases."

3 I'm wondering if you're assigning some special
4 meaning to the word "personalization" as compared to
5 "personalized."

6 A. I think context matters.

7 Q. So in the context that you're using it in your
8 report, which is just -- I think you're just quoting the
9 prompt.

10 A. Yes. My point is that either term, whether
11 it's "personalized" -- so "personalized" or
12 "personalization," that might prime people to think
13 about tailored advertising. That's the only point I'm
14 making. And by using advertising in the question, it
15 might be that people are associating the word
16 "personalized" or "personalization" or whatever word is
17 there.

18 Q. Under Section 3, "Comments on Hanssens Report,"
19 in the third sentence down, you write: "Survey results
20 are confounded because responses were likely heavily
21 impacted by priming. Participants were asked
22 specifically about ads starting in the second question
23 of the survey. The first question was used for
24 subterfuge and then threw out."

25 Do you see that?

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1 A. Yes.

2 Q. But there were 10 screening questions before
3 the substantive questions, right?

4 A. Were there? I need to pull up the survey then.

5 Q. All right. Feel free to do that. You should
6 have it has Exhibit 4.

7 A. Sure. There was screening questions. Okay. I
8 don't see how that's particularly relevant to the point
9 I made in the report.

10 Q. Well, from the -- from the survey taker's
11 perspective, it's all just one big survey, right? It's
12 not like you did the screening questions and then now
13 you're going to do the survey?

14 A. I don't know -- I wouldn't say that having, you
15 know, both experience conducting surveys and taking them
16 myself, that often it's pretty obvious where the
17 screening questions end and the actual survey begins.
18 So I wouldn't say that.

19 Q. Okay. But, I mean, do you know whether that's
20 the case with respect to this survey?

21 A. I think it's inconsequential.

22 Q. Okay. I mean, you say in your report -- you
23 write that participants were specifically asked about
24 ads starting in the second question of the survey, and
25 that's not accurate, right?

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1 A. Okay. So I was inacc -- so I was inarticulate
2 there. The point is that this question came before any
3 of the other substantive questions in the survey. And
4 so, you know, if this were the last question of the
5 survey, that would be a different situation because
6 participants had already answered prior questions
7 without being explicitly primed to think about
8 advertising, whereas because this was essentially the
9 first substantive question that came before the other
10 substantive questions, it tainted those results because
11 participants were told to think about advertising right
12 off the bat.

13 Q. Well, you're speculating that users were --
14 that it tainted the results.

15 A. That's the whole point of a confounding factor.
16 If we knew the extent to which the results were tainted,
17 we could correct for that and then it wouldn't be an
18 issue. That's the whole point of a confounding factor,
19 is we don't know -- this is a reasonable explanation, so
20 we don't know the extent to which this impacted the
21 results, which is why the results aren't reliable.

22 Q. In fact, you don't know whether it impacted the
23 results at all, right?

24 A. That's the point of a confounding factor, is
25 that this is -- you know, this is a significant concern

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1 because it could impact the results in a way that we
2 wouldn't be able to know about or even measure, and
3 that's why it needs to be corrected for.

4 Q. Right. And you could have tested yourself
5 whether it had any impact all on Dr. Hanssens' results
6 but you weren't asked to do that, right?

7 MR. PRICE: Object to the form.

8 THE WITNESS: I was not asked to do that.

9 BY MR. BROOME:

10 Q. But you easily could have tested whether what
11 you call a confounding factor had any impact on
12 Dr. Hanssens' results?

13 MR. PRICE: Object to the form. Outside the
14 scope.

15 THE WITNESS: I don't think I would have been
16 able to you know, exactly determine how that confounding
17 factor -- I would not be able to determine how it
18 impacted his prior survey, which is why it's a serious
19 issue. I could, you know, design -- create a better
20 designed study to answer the question that he was
21 supposed to answer, sure, but that's -- again, that's
22 not what I was hired to do.

23 BY MR. BROOME:

24 Q. In the same sentence you say that users were
25 asked specifically about ads in the second question of

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1 think about advertising prior to answering those four
2 questions.

3 A. Yeah.

4 Q. So how -- before the first is -- when you say
5 those four questions, you're saying questions two,
6 three, four and five, right? So before they get to
7 question two, they're primed to think about advertising?

8 A. Before they put an answer to question two,
9 immediately before providing an answer to question two,
10 they're asked about advertising.

11 Q. Okay. Okay. And you think that affected their
12 answers to questions four and five?

13 A. I think there's a possibility that it did. I
14 don't -- I mean, again, this is why it's a confounding
15 factor. I don't know if and the extent to which it did
16 but a reasonable expert looking at this, you know, study
17 methodology would ask this question and this would not
18 be published in a reputable scientific conference
19 because this is a serious methodological error.

20 Q. And is there authority, like research that you
21 could have cited to support that opinion?

22 A. About why your study should be free of
23 confounding factors?

24 Q. No. Supporting your opinion that the use of
25 the word advertising in question two would have primed

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1 what you're asking?

2 MR. PRICE: Object to the form.

3 THE WITNESS: Are you saying that it would be
4 disputed among experts as to whether priming is a
5 concern when conducting experimental research?

6 BY MR. BROOME:

7 Q. I think it would be disputed among experts
8 whether the use of the word advertising in question two
9 tainted the rest of the survey.

10 MR. PRICE: Object to the form.

11 THE WITNESS: I think whether it did is
12 certainly a source of speculation among experts, and
13 that's why the survey shouldn't be relied upon, because
14 that's un-- it's an unknown. We don't know the extent
15 to which that confounded the results.

16 BY MR. BROOME:

17 Q. So take a look at question four.

18 A. Okay.

19 Q. It says, "Suppose you want details about how
20 the free version of the Weather Channel App may use your
21 location data."

22 Which source, if any, will you consult?

23 A. Okay.

24 Q. How would the use of the word advertising in
25 question two and three taint respondents' responses to

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1 Q. Okay. So to get -- to get a sample that is
2 representative of the class, in your view, users should
3 not have been asked about The Weather Channel app,
4 whether they use The Weather Channel app?

5 MR. PRICE: Object to the form.

6 THE WITNESS: I think ideally, no. I don't
7 think a real -- I don't think that the survey should
8 have been framed around a real app because this
9 introduces a potential source of bias.

10 BY MR. BROOME:

11 Q. Okay. And that potential source of bias is
12 resolved in the robustness survey?

13 A. That potential source is resolved, yes, that
14 people aren't being, you know, tested on -- that their
15 preconceived notions of The Weather Channel app aren't
16 necessarily impacting their responses. But there are
17 issues that we've already gone over with the robustness
18 survey.

19 Q. All right. In the next paragraph, second --
20 third sentence, you write: "The target population is
21 not all users who can recall both using the TWC app and
22 granting it access to their location data but instead
23 should be TWC app users who were encountering the app's
24 privacy disclosures for the first time and must make
25 them -- must use them to make decisions about their

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1 STATE OF CALIFORNIA)

2) SS:

3 COUNTY OF LOS ANGELES)

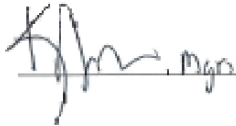
4
5 I, Monice K. Campbell, Certified Shorthand
6 Reporter, Certificate 14171, hereby certify:

7 I am the deposition officer that
8 stenographically recorded the testimony in the foregoing
9 deposition;

10 Prior to being examined, the deponent was
11 by me first duly administered an oath;

12 The foregoing is a true record of the testimony
13 given.

14
15 Dated: July 23, 2022

16
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18 Monice K. Campbell, CCR No. 14171
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